

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

BRIAN AVERY SMITH,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent,

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No. 4:14CV769 JCH

**MEMORANDUM AND ORDER**

This matter is before the Court on movant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. It is apparent on the face of the motion that movant is not entitled to relief. Therefore, the motion will be dismissed without further proceedings.

Movant was convicted in this Court on one count of wire fraud and sentenced to five years' probation. United States v. Smith, 4:10CR142 JCH (E.D. Mo.). On January 10, 2011, jurisdiction over movant's probation was transferred to the United States District Court for the Western District of New York. United States v. Smith, 1:11CR24 RJA (W.D.N.Y.) In August 2012, movant pled guilty to violating the conditions of parole, and in May 2013 the Western District of New York sentenced movant to time served. Id.

Movant's sole contention appears to be that the grant of immunity contained in his plea agreement should have barred his prosecution for parole violation in the Western District of New York. The government has moved to dismiss the motion on the basis that the ground raised is non-cognizable.

This Court does not have jurisdiction to rule on the validity of a sentence imposed by the Western District of New York. See 28 U.S.C. § 2255(a); Farrow v. United States, 580 F.2d

1339, 1349 (9th Cir. 1978) (motion must be filed in sentencing court). Section 2255 motions must be filed in the district where the judgment that is being challenged was imposed.

Because it is clear that jurisdiction does not lie in this Court, the Court will not issue a certificate of appealability.

Accordingly,

**IT IS HEREBY ORDERED** that the government's motion to dismiss [ECF No. 3] is **GRANTED**.

**IT IS FURTHER ORDERED** that movant's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 is **DISMISSED**, and movant's motion for appointment of counsel [ECF No. 2] is **DENIED**.

**IT IS FURTHER ORDERED** that the Court will not issue a certificate of appealability.

An Order of Dismissal will be filed separately.

Dated this 24<sup>th</sup> day of April, 2014.

/s/Jean C. Hamilton\_\_\_\_\_

JEAN C. HAMILTON

UNITED STATES DISTRICT JUDGE